

**WESTERN STATES CONTRACTING ALLIANCE**  
**MASTER PRICE AGREEMENT**  
**for**  
**COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES**  
**GATEWAY COMPANIES**

**Number A63308**

This Agreement is made and entered into by Gateway Companies, 610 Gateway Drive, N. Sioux City, SD, 57049, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

**1. Definitions**

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner/copying devices), scanners, monitors, keyboards, cameras (digital and video used in conjunction with computing equipment), projectors, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the Contract Administrator.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor" or "Reseller Agent" or "Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

**2. Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

**3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

**4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

**5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

**6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

**A. Acceptance**

A Purchasing Entity shall reasonably determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service, failing which the Product or Services, as the case may be, shall be deemed accepted by the Purchasing Entity.

**B. Payment of Invoice**

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also in accordance with the Contractor's commercial Return Policy. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
  - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  - 3. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
- 4. The Product has been properly designed and manufactured for its intended use, and

5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
  - a) Gateway Custom Integrated Solutions (CIS) Software Installation Agreement
  - b) Standard Terms and Conditions for Gateway Custom Integrated Solutions
  - c) Standard Terms of Sale and Limited Warranty Agreement
- B. Contractor may modify the limited warranties described in Exhibit A from time to time with prior written approval of the Contract Administrator. Scope and length of limited warranties are set forth within the specific configurations on the Contractor's web page.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
  1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
  1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
  1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.



**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders quoted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. When the Cumulative Inception-to-Date Sales Volume ("ITD SV") for all WSCA Participating Entities of the Contractor reaches the thresholds shown below, the Contractor will apply the greater discount listed to all prospective Orders placed by WSCA Participating Entities for that Product Series. ITD SV will be calculated within thirty (30) days after the end of each quarter. The increased discount(s) will be applied to Orders issued on the first of the month of the following quarter.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
  - Band 1: File/Print Servers, Mid-Range Servers
  - Band 2: Desktops, Laptops, Tablet PCs,
  - Band 3: Printers, High speed; Medium speed; Desktop; Laptop
  - Band 4: Storage SolutionsLAN equipment and related software.  
General Purpose Software
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to deliver Products to Purchasing Entities within 10 - 30 days after receipt of a valid Purchase Order pending parts availability, or in accordance with the schedule in the Purchasing Entity's Purchase Order. The Contractor shall provide the estimated time of arrival at the time of quotation.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead

State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.

- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be new or serviceably used (tested to new).

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is

confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Gateway Companies, Inc.  
610 Gateway Drive  
N. Sioux City, SD 57049  
Attn: Kris Mogensen, Contractor Administrator  
E-mail: kris.mogensen@gateway.com  
Phone: 800.846.2042, ext. 28971  
Fax: 605.232.2533

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.

5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.



**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.

- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State, without recourse, any and all claims for overcharges as to goods and/or services provided by Contractor in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State ("Antitrust Claims), providing that the State, and not the Contractor, actually suffered those damages being assigned. Contractor does not waive or assign any of its rights, interest or title to the defense the Contractor may have related to or arising out of any Antitrust Claims.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each applicable delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN 143004991. The list of E-Rate qualifying products can be found on the E-Rate website at: <http://sl.universalservice.org>.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. GATEWAY COMPANIES**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Mary Jane Sweeney

Title: Senior Manager, Contracts

Date: 7/2/04

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 7/6/04

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: [Signature]

Date: 6 JUL 04

## EXHIBIT A - ADDITIONAL WARRANTIES

### CUSTOM INTEGRATED SOLUTIONS (CIS) SOFTWARE INSTALLATION AGREEMENT

This Agreement is made this      day of      , 200 ("Effective Date") by and between Gateway Companies, Inc., ("Gateway") and      ("Customer"). Under the following terms and conditions, Gateway will receive (or furnish), replicate and install ("Software") on Gateway computer products ("Products") purchased by Customer.

1. **Title:** Title or license to copyrights and patents in the Software (and the source and object code associated with the Software) are and shall remain the property of Customer or Customer's licensors. All copies of the Software made by or for Gateway, as well as any and all Software developed by Gateway for Customer's benefit, shall remain the property of Customer. Gateway shall install the Software only on Customer designated Products.
2. **License Grant:** In order to perform this service, Customer hereby grants to Gateway and its affiliates a nonexclusive, nontransferable license and right to internally manufacture, use, and reproduce copies of the Software as contemplated herein. If necessary to fulfill Customer's instructions, such grant shall also include the right to modify, create and reproduce computer derivative works, which works shall belong to the licensor of the Software.
3. **Representations & Warranties:** Customer represents and warrants that: (1) it has full power to enter into this Agreement; (2) it has all rights, title, and interest in the Software and the right to copy or have copies made for its own use, and such rights can be conveyed to Gateway without restriction for the purposes contemplated herein; (3) modifications which the Customer requests Gateway to make to the Software do not infringe upon or misappropriate any copyright, patent, trade secret, or other proprietary rights of any third party; (4) the media upon which the Software is provided to Gateway by Customer is free from all defects and viruses; and (5) installation of the Software shall not by itself result in any performance problems or degradation of the Gateway Products.
4. **Export Control Compliance:** Customer shall comply with any applicable export control laws and regulations as they apply to the Software and/or the export of Gateway Products onto which the Software has been installed as contemplated by this Agreement, and shall obtain any permits and licenses required for the lawful export, operation and use of such Products or components thereof. Customer shall indemnify and defend Gateway against any breach of its obligations under this paragraph and shall pay all resulting costs, damages and attorney's fees related thereto.
5. **Indemnification:** To the extent permitted by law, the Customer agrees to indemnify, hold harmless and defend Gateway, its officers, directors, contractors and employees from and against any assertions, claims, causes of action, liabilities, costs, losses, and damages, including direct, indirect, or consequential damages arising out of or relating to any matter contemplated by this Agreement including: (1) alleged infringement or violation of any trademark, copyright, trade secret, right of publicity or privacy, patent or other proprietary right with respect to the Software; (2) any possession or use of confidential or proprietary information or trade secrets Customer has obtained from sources other than Gateway; (3) any Customer failure to comply with federal, state or local law (including notice of any ITAR encryption requirements); and (4) the breach of any representation, covenant or warranty stated herein.
6. **General Provisions:** All matters arising as between Gateway and Customer with respect to the subject matter of this Agreement which are not specifically addressed herein shall be governed by the Gateway Standard Terms and Conditions of Sale accompanying the Products, which are incorporated herein by this reference.

IN WITNESS WHEREOF Gateway and Customer have executed this Agreement as of the Effective Date by signature of their authorized representatives.

Gateway Companies, Inc.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

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Gateway Confidential, rev. 01.15.02

## EXHIBIT A, Continued

### STANDARD TERMS AND CONDITIONS FOR GATEWAY CUSTOM INTEGRATED SOLUTIONS

This Agreement sets forth the terms of your ("Buyer") order ("Order") for custom services from Gateway, Inc. or any of its subsidiaries or affiliates ("Gateway"). Upon its acceptance of your Order, Gateway will provide the services set forth in your Order on these terms and the terms in Gateway's Standard Terms of Sales and Limited Warranty Agreement (the "Terms of Sale"), which together are the complete agreement between you and Gateway.

1. **DEFINITIONS.** "Custom Software and Hardware" means software and hardware not listed on Gateway's standard product list. "Furnished Property" means Custom Software and Hardware purchased by Buyer and supplied to Gateway for custom order integration.
2. **BUYER'S OBLIGATIONS.** Buyer agrees to: provide to Gateway written authorization to place orders with hardware and software suppliers for and on behalf of Buyer and to be solely responsible for all costs and expenses therefor; be solely responsible for system compatibility testing of Custom Software and Hardware; obtain a valid and enforceable license to have Custom Software loaded on Gateway's products and use of the Custom Software in a legal and appropriate manner; and perform all other Buyer obligations as set forth in these terms and conditions.
3. **RETURN POLICY.** Buyer may return products under Gateway's return policy as provided in Section 3 of the Terms of Sale, except that (i) for Custom Hardware and Software, Gateway will act as Buyer's representative by returning such Custom Hardware or Software to the supplier and remitting to Buyer any proceeds, and (ii) for Products that have been customized to Buyer's specifications, the amount of any refund will be reduced by the greater of (a) 20% of the purchase price of the Products, or (b) costs Gateway incurs to eliminate custom features reasonably necessary to render such products commercially salable.
4. **GATEWAY'S OBLIGATIONS.** Gateway will procure on your behalf and as your agent the Custom Software and Hardware and integrate Custom Software and Hardware with Gateway products as specified in the Order. Gateway agrees to support Gateway-branded products as provided in the Terms of Sale. Such support shall not apply to any Custom Software and Hardware, whether integrated into a Gateway system or sold as a stand-alone item. Any support for Custom Hardware and Software should be obtained directly from the maker(s) and/or licensors of such Custom Hardware and Software. Gateway may, as a service to its customers, assist efforts to replace defective custom hardware covered under the maker(s) warranty, through facilitation of orders for replacement parts. Gateway shall not be responsible for any damages or losses that occur as a result of installation/integration of Custom Software or Hardware. Gateway will not install Custom Software on systems repaired at Buyer's location. Gateway may, in its discretion, install Custom Hardware and Software on systems that are repaired or replaced at a Gateway service facility.
5. **PERIOD OF PERFORMANCE.** Period of performance shall be the lesser of one (1) year from date of award or until all Orders have been completed. Gateway and Buyer shall have the option to extend the period of performance upon mutual agreement.
6. **FURNISHED PROPERTY.** Furnished Property shall be supplied to Gateway in sufficient time to enable Gateway to meet delivery schedules. Buyer shall provide a monthly forecast of expected purchases and Purchase Orders shall be issued with adequate lead-times to meet such forecasts. All Furnished Property shall be assigned a custom part number. The Furnished Property shall be segregated from standard Gateway inventory. Gateway shall not order Furnished Property for and on behalf of Buyer until receipt of an authorized Purchase Order from Buyer. Title to all Furnished Property shall remain in Buyer or Buyer's licensors of the furnished hardware or software.
7. **MATERIAL AND WORKMANSHIP; MODIFICATION.** All Furnished Property incorporated in the work covered by this Order are to be new and of the most suitable grade for the purpose intended. Reference to any Furnished Property by trade name, make or catalog number shall be regarded as establishing a standard of quality, and Gateway may substitute, upon written approval by Buyer, any item, material, or process which in Gateway's judgment is equal to that named.
8. **CHANGES TO ORDERS.** Changes within the scope of this Order shall be made by written notice from Buyer to Gateway. Change notices shall be provided fifteen (15) days prior to the requested change. All changes shall be evaluated for equitable adjustment and the prices shall be adjusted accordingly. Gateway reserves the right not to accept changes that it determines, in its sole discretion, are outside the scope of this Order.

9. **DISCLAIMER OF WARRANTIES.** IN ADDITION TO THE DISCLAIMER OF WARRANTIES SET FORTH IN THE TERMS OF SALE, GATEWAY (FOR ITSELF AND ON ITS BEHALF AND OF ITS LICENSORS) DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO THE CUSTOM SOFTWARE AND HARDWARE, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, DEFECTS IN DISKETTES OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE CUSTOM SOFTWARE AND HARDWARE, AND ANY PARTICULAR APPLICATION OR USE OF THE CUSTOM SOFTWARE AND HARDWARE.
10. **ADDITIONS TO PRICE.** Any tax, fee, duty, levy, or other charge which Gateway may be required by federal, state, municipal, or other law now in effect or hereafter enacted, to withhold, collect or pay with respect to the sale, delivery, or use of any Gateway product shall be added to the price of such product.
11. **EXPORT CONTROLS.** Buyer agrees to comply with export laws and regulations of the Government of the United States that may apply to Gateway products, and to obtain any licenses required for export. Buyer agrees not to export any Gateway products without first obtaining Gateway's approval and, if required, the permission of the U.S. Departments of Commerce or State, either in writing or as provided by applicable regulation. This requirement shall survive the expiration of this Order. Buyer further agrees not to transact business with any person or firm identified by the U.S. Departments of Commerce or Treasury as being denied the right to receive any U.S. product.
12. **INDEMNITY.** Buyer agrees to indemnify and hold harmless Gateway and its licensors against any and all demands, claims, actions or causes of action, losses, damages, liabilities, costs and expenses, including, without limitation, judgments, interest, penalties, settlement amounts, court costs and attorneys' fees and expenses, whether at law or equity, asserted against, imposed upon or incurred by Gateway or its licensors arising out of or relating to any misrepresentation, breach of warranty or covenant by Buyer under this Order, infringement of any patent, trademark, copyright, trade secret or other intellectual property right or any actual or alleged act or omission of Buyer related to its performance of its obligations hereunder.
13. **PAYMENT TERMS.** Unless otherwise specified on the front of this Order, the terms of payment for purchases made under this Order are net thirty (30) days from the date of Gateway's invoice to Buyer.
14. **GENERAL.** You may not assign this Agreement without Gateway's written consent. Gateway, Inc. and its subsidiaries and affiliates are intended beneficiaries of this Agreement. If there is any inconsistency between this Agreement, the Terms of Sale and/or any other agreement included with or relating to products or services purchased from Gateway, the Terms of Sale shall govern. This Agreement may not be modified, altered or amended without the written agreement of Gateway. Any additional or altered terms attached to your Order shall be null and void, unless expressly agreed to in writing by Gateway.

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Rev. 08.20.03

## EXHIBIT A, Continued

### STANDARD TERMS OF SALE AND LIMITED WARRANTY AGREEMENT

This Agreement applies to any order, purchase, receipt, delivery or use of any products and services (collectively, "purchase") from Gateway, Inc. or any of its subsidiaries or affiliates ("Gateway") or a Gateway authorized reseller ("Reseller"), unless you enter into a separate written agreement with Gateway. **THIS AGREEMENT APPLIES TO YOUR PURCHASE UNLESS YOU NOTIFY GATEWAY IN WRITING THAT YOU DO NOT AGREE TO THIS AGREEMENT WITHIN 15 DAYS AFTER YOU RECEIVE THIS AGREEMENT AND YOU RETURN YOUR PRODUCT OR CANCEL SERVICES UNDER GATEWAY'S REFUND POLICY. THIS AGREEMENT CONTAINS A DISPUTE RESOLUTION CLAUSE. PLEASE SEE SECTION 8 BELOW.**

- 1. Payment Terms.** Advertised prices are in U.S. dollars and exclude shipping, handling and taxes unless otherwise noted. You are responsible for paying all taxes associated with your order. Gateway may change prices without notice to you before Gateway enters your order and may modify and substitute products and components without notice to you prior to shipping. Payment is due at the time stated in your invoice or when product is shipped unless Gateway has extended credit to you. Amounts not paid when due bear interest at the rate of 1.5% per month (18% per annum) or the highest rate allowed under applicable law, whichever is lower. If you financed your purchase, the loan or lease transaction is between you and your lender, independent of your purchase from Gateway, except that Gateway may, at the request of your lender, withhold technical and warranty support and other services from you.
- 2. Shipping and Title.** Gateway will arrange to ship products to you. Title to products passes to you when Gateway delivers them to the shipper and risk of loss passes to you when the shipper delivers products to the address you designate. Title to software remains with the licensor of the software. Your use of software is subject to license agreements applicable to the software. You must notify Gateway of damaged or missing items from your order within 30 days after you receive your product.
- 3. Return Policy.** You may return products and cancel unused services within 15 days after you receive your product or are invoiced for services, except that E Series systems and server products may be returned within 30 days after you receive your product. To return products and cancel services you must follow Gateway's return procedures, including obtaining a return merchandise authorization (RMA) kit and returning products within 7 days after you receive an RMA kit. Gateway will refund the original purchase price of products, unperformed services and related sales taxes. **SHIPPING & HANDLING FEES (INCLUDING RELATED SALES TAXES) ARE NOT REFUNDABLE. YOU ARE RESPONSIBLE FOR PRODUCTS UNTIL GATEWAY RECEIVES THEM. YOU WILL BE**
- CHARGED SHIPPING AND HANDLING OR RESTOCKING FEES TO RETURN PRODUCTS.** Returned products must be in the same condition as you received them. You must return all pre-loaded software with the product to obtain a refund for the product, and you may only return pre-loaded software if you choose to return the product. You may return other software only if the package has not been opened. **THIS RETURN POLICY IS NOT A WARRANTY. NOTE:** Gateway will not accept for return any products you purchased from a Reseller. Additional restrictions may apply on certain products purchased from the Gateway Accessory Store. Please visit our Help pages for more information.
- 4. Technical Support.** Gateway will provide technical support for products at no additional charge for 30 days from the date of shipment or invoice or, if longer, the period stated in your service package. For Gateway-branded personal computers and servers, the scope of technical support consists of helping you reinstall the operating system and factory-installed software and restore it to the original factory configuration. In addition, during your support period Gateway will assist you with (i) installation of any network operating system ("NOS") purchased by you from Gateway; (ii) configuration of the NOS software so that it works with the networked Gateway computers you purchased; (iii) setup of the NOS software so that it is fully integrated with other products you purchased from Gateway; and (iv) troubleshooting issues associated with the NOS software and assistance with NOS error messages. Technical support for issues beyond the scope of this basic technical support may be available under other service packages. Gateway provides technical support via on-line, telephone and other methods. Gateway may change the means through which it provides technical support at any time. Gateway does not guarantee that software will be free from errors, either in isolation or in combination with hardware.
- 5. Product Warranty.** Gateway warrants to the original purchaser or, for products purchased from a Reseller, to the original end-user that Gateway-branded products will be free from defects in materials and workmanship from the



date of shipment for 30 days from the date of shipment or invoice or, if longer, the period stated in the product manual or your service package. During the warranty period, Gateway will, at its option: (1) provide replacement parts necessary to repair the product, (2) replace the product with a comparable product, or (3) refund the amount you paid for the product, LESS DEPRECIATION, upon its return. Gateway or a third party service provider, under a separate agreement between you and the service provider, will provide labor to resolve warranty issues during your warranty period. Repair services are available at your location only if provided as part of the service package you purchased. Gateway will determine how and where repair services are provided, and you may be required to deliver your product to an authorized service location. Replacement parts or products will be new or serviceably used, comparable in function and performance to the original part or product, and warranted for the remainder of the original warranty period or, if longer, 30 days after they are shipped to you. You authorize Gateway to send replacement parts and products to an authorized third party service provider. Purchasing additional products from Gateway does not extend your warranty period. To obtain service under this limited warranty, you must follow Gateway's warranty procedures. If Gateway asks you to return defective parts or products, you must do so within 7 days after you receive the replacement parts or products. Gateway will charge you for replacement parts or products if you fail to do so. If you are a domestic U.S. customer who purchased a product directly from Gateway, Gateway will arrange to ship replacement parts or products to and from you, and will pay the shipping costs. If you live outside the United States, the details of your warranty service may vary as described below. **THIS LIMITED WARRANTY COVERS NORMAL USE. GATEWAY DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR DAMAGES CAUSED BY MISUSE, ABUSE, ACCIDENTS, VIRUSES, UNAUTHORIZED SERVICE OR PARTS, OR THE COMBINATION OF GATEWAY BRANDED PRODUCTS WITH OTHER PRODUCTS. THIS LIMITED WARRANTY DOES NOT COVER SOFTWARE OR NON-GATEWAY BRANDED PRODUCTS. ANY WARRANTY APPLICABLE TO SOFTWARE OR NON-GATEWAY BRANDED PRODUCTS IS PROVIDED BY THE ORIGINAL MANUFACTURER.**

6. **Services and Service Warranty.** The terms of services provided to you by Gateway consist of this Agreement and the additional terms stated in separate services descriptions provided by Gateway. For a period of 30 days after services are performed, Gateway warrants that services provided by it will be performed in a professional

and workmanlike manner. You should back up all files before services are performed. **GATEWAY IS NOT RESPONSIBLE FOR ANY LOSS OF YOUR DATA.**

7. **Disclaimer of Warranties; Limitation of Liability.** EXCEPT FOR THE WARRANTIES EXPRESSED IN THIS AGREEMENT, GATEWAY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW. THE TERM OF ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED ARE LIMITED TO THE TERM OF THIS AGREEMENT. GATEWAY'S AND YOUR MAXIMUM LIABILITY TO THE OTHER IS LIMITED TO THE PURCHASE PRICE YOU PAID FOR PRODUCTS OR SERVICES PLUS INTEREST AS ALLOWED BY LAW. NEITHER YOU NOR GATEWAY IS LIABLE TO THE OTHER IF YOU OR IT ARE UNABLE TO PERFORM DUE TO EVENTS YOU OR IT ARE NOT ABLE TO CONTROL, SUCH AS ACTS OF GOD, OR FOR PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA OR OTHER CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, OTHER THAN THOSE DAMAGES THAT ARE INCAPABLE OF LIMITATION, EXCLUSION OR RESTRICTION UNDER APPLICABLE LAW. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.
8. **Dispute Resolution.** You and Gateway agree that any Dispute between You and Gateway will be resolved exclusively and finally by arbitration administered by the National Arbitration Forum (NAF) and conducted under its rules, except as otherwise provided below. You and Gateway will agree on another arbitration forum if NAF ceases operations. The arbitration will be conducted before a single arbitrator, and will be limited solely to the Dispute between You and Gateway. The arbitration, or any portion of it, will not be

consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The arbitration shall be held at any reasonable location near your residence by submission of documents, by telephone, online or in person whichever method of presentation You choose. If You prevail in the arbitration of any Dispute with Gateway, Gateway will reimburse You for any fees you paid to NAF in connection with the arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered thereon in any court of competent jurisdiction. Should either party bring a Dispute in a forum other than NAF, the arbitrator may award the other party its reasonable costs and expenses, including attorneys' fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this dispute resolution provision. You understand that, in the absence of this provision, You would have had a right to litigate disputes through a court, including the right to litigate claims on a class-wide or class-action basis, and that You have expressly and knowingly waived those rights and agreed to resolve any Disputes through binding arbitration in accordance with the provisions of this paragraph. This arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, et seq. For the purposes of this provision, the term "Dispute" means any dispute, controversy, or claim arising out of or relating to (i) this Agreement, its interpretation, or the breach, termination, applicability or validity thereof, (ii) the related order for, purchase, delivery, receipt or use of any product or service from Gateway, or iii) any other dispute arising out of or relating to the relationship between You and Gateway; the term "Gateway" means Gateway, Inc, its parents, subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents, assigns, component suppliers (both hardware and software), and/or any third party who provides products or services purchased from or distributed by Gateway; and the term "You" means you, or those in privity with you, such as family members or beneficiaries. Information may be obtained from the NAF on line at [www.arb-forum.com](http://www.arb-forum.com), by calling 800-474-2371 or writing to P.O. Box 50191, Minneapolis, MN, 55405.

additional or altered terms attached to your order shall be null and void, unless expressly agreed to in writing by Gateway. If any term of this Agreement is illegal or unenforceable, the legality and enforceability of the remaining provisions shall not be affected or impaired. This Agreement shall be interpreted under the laws of the State of South Dakota, without giving effect to conflicts of law rules.

9. **General.** You may not assign this Agreement without Gateway's written consent. Gateway, Inc. and its subsidiaries and affiliates are intended beneficiaries of this Agreement. If there is any inconsistency between this Agreement and any other agreement included with or relating to products or services purchased from Gateway, this Agreement shall govern. This Agreement may not be modified, altered or amended without the written agreement of Gateway. Any

**Privacy Notice.** Gateway respects our customers' right to privacy and will take all appropriate steps to keep your personal information confidential. You can review Gateway's Privacy Policy on our web site. The Privacy Policy also explains how you can update your information and elect not to receive email marketing solicitations from Gateway. In addition, Gateway obtains customer information from other companies that provide products and services to our customers. By purchasing, registering for or using other companies' products and services that are distributed by Gateway, you agree that these companies may transfer your customer information to Gateway. Gateway will maintain and use your customer information in accordance with its Privacy Policy.

**For Residents of Canada:**

1. This Agreement is subject to the applicable provisions of Canadian consumer protection laws that cannot be derogated from by private agreement.
2. **Shipping and Title** You must comply with all applicable export laws and regulations of Canada, the United States and other relevant countries if you export the Product outside Canada.
3. **Return Policy.** Gateway does not accept for return any products purchased from a reseller. To return products to Gateway, contact Gateway Canada Tech Support and follow the instructions you receive. In all cases, Gateway will not be responsible for any shipping and handling charges to and from Gateway, or paying or refunding customs fees or taxes that may be due.
4. **Language.** You confirm your request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Vous reconnaissez avoir requis que la présente convention ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.

**For Residents of Mexico:**

1. **Shipping and Title.** You must comply with all applicable export laws and regulations of Mexico, the United States and other relevant countries if you export the Product outside Mexico.
2. **Return Policy.** Gateway does not accept for return any products purchased from a reseller. To return products to Gateway, contact Gateway Mexico Tech Support and follow the instructions you receive. To return a product purchased directly from Gateway in the United States, contact Gateway International Support in the United States and follow the instructions you receive. In all cases, Gateway will not be responsible for any shipping and handling charges to and from Gateway, or paying or refunding customs fees, taxes, or VAT that may be due.

**For All International Customers:**

The standard warranty stated above also applies to Gateway products shipped to a country outside the United States, *provided that* customers outside the United States and Canada are responsible for paying all freight charges incurred in shipping, importing/exporting and receiving replacement products and parts and for arranging and paying for the shipment of any defective part(s) back to the Gateway. All international customers are responsible for all customs duties, VAT and other associated taxes and charges.

Please send correspondence about this Agreement to:  
Gateway Customer Services Department  
610 Gateway Drive  
Attn: Warranty Services  
North Sioux City, SD 57049

## **EXHIBIT B - COMPLAINT RESOLUTION**

The following describe Gateway's Complaint Resolution Procedures. Timelines are dictated case-by-case. Gateway strives to facilitate resolutions as timely as possible.

### **A. Technical Support**

1. Procedures for Service and Equipment
  - a. The initial contact with a Gateway Technical Support Professional focuses on diagnosing symptoms to determine/implement an immediate resolution.
  - b. If the Technical Support Professional cannot resolve the issue, s/he obtains assistance from a Senior Level Support Professional.
  - c. If the Senior Level Support Professional cannot resolve the issue, it's escalated directly into the Advanced Services Lab.
2. The Advanced Services Lab technicians interface directly with Sustaining Engineering, Manufacturing, and vendors as needed to resolve the issue. The lab representative takes complete ownership of the issue and works continuously until the resolution is achieved.

### **B. Billing**

#### **Procedures for Billing Issues/Disputes**

1. When a WSCA Purchasing Entity experiences billing issues, the Purchasing Entity will contact the dedicated Sales Support member or Account Executive.
2. The Support Member or Account Executive will first look at the transaction and work directly with the Gateway billing department to resolve the issue or dispute.
3. If the issue/dispute is not readily resolved, the Support Member or Account Executive will put the Purchasing Entity in direct contact with our billing personnel. Currently, Gateway has dedicated billing personnel for territories.
4. For those issues/disputes that result from an overcharge to the customer, Gateway will provide a credit to the customer's account or a refund check.
5. In cases where the issue/dispute is found to be accurate, Gateway will work with the Purchasing Entity to understand the description of the charges and work with them to resolve the outstanding amount.

### **C. Complaint Resolution Executive Response Team (ERT)**

#### **Procedures for Complaints**

Gateway recognizes that consistently high customer satisfaction is the key to our success. Gateway also recognizes that in order to achieve this we must be able to provide immediate responses to important customer calls. Therefore, Gateway created the Executive Response Team (ERT) to handle such important customer calls. The ERT is designed to quickly engage the Gateway personnel responsible for handling the customer's specific issue/question resulting in an expeditious and satisfactory resolution of the customer's call.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs.

### **A. Built-to-Order Services**

From standard services to customized support, Gateway can help maximize your investment and lower your total cost of ownership. Our award-winning support is one of the most efficient ways to ensure uptime, manage daily problems and offer exceptional service. We can help free up IT staff and streamline network management. Many of these services are priced on multiple factors such as the statement of work, travel time, quantity of units, etc. Benefits of these services include:

1. Single Point of Contact – On-site, on-line or over the phone
2. Customized System and Network Support to meet your needs
3. Free Up Your IT Staff with Gateway's end user system and application support
4. Save Time with immediate access to senior-level technicians
5. Minimize Downtime with committed 4-hour onsite response times
6. Control the Total Cost of System Repairs with extended service plans

### **B. Support & Maintenance Services**

1. Service Plans – All Gateway systems are built for reliable performance and backed by our award-winning service and support. Gateway recommends our customers assess their organization's use of technology and consider enhancing their limited warranty coverage to protect their IT staff from repair hassles and from unplanned expenses. Some of the options available to Gateway's customers include:

- a. Extended Service Plans – A cost-effective solution to solve day-to-day issues without adding to your IT workload. Extended service plans, up to five years, are a sound investment to lengthen the usable life of systems.
- b. 4-Hour On-Site Response Service for Servers – The highest level of technical support, ensuring a quick network recovery. A Gateway Server Engineer is at your location within four hours of your initial call.
  - On-Site Response Coverage for 4-Hour Response for Servers - Gateway has 4-hour response plan coverage throughout the majority of the United States
  - On-Site Replacement Service Availability
    - 5x9 service – Available five days a week, Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays
    - 7x24 service – Available seven days a week, 24 hours per day
    - Available in increments of 3, 4, or 5 years
- c. 2-Hour On-Site Response Service for Servers– The highest level of technical support, ensuring a quick network recovery. A Gateway Server Engineer is at your location within four hours of your initial call.
  - On-Site Response Coverage for 2-Hour Response for Servers - Available in selected cities across the continental United States.
  - On-Site Replacement Service Availability - 7x24x365 service – Available seven days a week 24 hours per day 365 days per year. Available coverage for up to 5 years from date of purchase.

2. Accidental Damage Protection
3. eSupport - Asset Management and e-Mail alerts
4. Personalized Help Desk Services
5. Escalation Advisor
6. System Management Services

### **C. Installation Services**

1. Installation Services for Servers
2. Installation Services for PCs
3. 90-Day Server Guarantee

**D. Custom Integrated Solutions**

1. Software Image Installation
2. Custom Hardware
3. Asset/Info Tags
4. Network Configuration
5. Delivery Logistics

**E. Training**

1. Gateway Managed Learning Platform
2. Gateway Training and Development Courses
3. Training for Office End Users
4. Training for Business and Project Management
5. Training for Database Professionals
6. Training for Network Professionals
7. Training for Professionals

**F. Additional Services**

1. Asset Recovery
2. Corporate E-mail Service
3. Network Integration Services
4. Esource
5. Gateway's Account Management Program
6. Gateway eProcurement Solutions
7. Gateway's Authorized Service Provider (Self Maintainer) Program
8. The Network Solution Provider (NSP) program
9. Gateway OS Migration Services
10. Gateway Biometrics Solution
11. Asset Management System



**WSCA/NASPO Contract Administration**

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)  
TO CONTRACT NUMBER: A63308**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Gateway Companies (Contractor).

**WHEREAS**, the Lead State has a Contract with the Contractor identified as No. A63308, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

**WHEREAS**, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts.

**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

1. Change the definition of "Peripherals" to read: "Peripherals" include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies (UPS) and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

This Amendment is effective beginning on September 1, 2004, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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**WSCA/NASPO Contract Administration**

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

**1. CONTRACTOR****GATEWAY COMPANIES**

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: for  
Title: Mary Jane Sweeney, Senior Manager ContractsDate: 9.1.04**2. LEAD STATE****MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Title: Acquisition Management SpecialistDate: 9/3/04

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**3. LEAD STATE****COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: Date: 10 SEP 04





**WSCA/NASPO Contract Administration**

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: TWO (2)  
TO CONTRACT NUMBER: A63308**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Gateway Companies, Inc. (Contractor).

**WHEREAS**, the Lead State has a Contract with the Contractor identified as No. A63308, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

**WHEREAS**, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

**WHEREAS**, the terms of the Contract specifically state that: "MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors."

**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

The printer categories currently included in Band 3, Printers are: Medium Speed Laser, Desktop Laser, and Portable (Laptop) Ink.

The following printer categories are hereby added to Band 3, Printers:

- Multi-functional - Desktop Laser
- Multi-functional - Medium Speed Laser
- Multi-functional - High Speed Laser

This Amendment is effective beginning on May 1, 2005, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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# WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

## 1. GATEWAY COMPANIES, INC.

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Kristin Magnusen  
for  
Title: James E. May, Acting Manager Contracts  
Date: 4.22.05

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## 2. LEAD STATE

### MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke  
Title: Acquisition Management Specialist  
Date: 5/5/05

## 3. LEAD STATE

### COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]  
Date: 5 MAY 05



**WSCA/NASPO Contract Administration**

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: 3  
TO CONTRACT NUMBER: A63308**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Gateway Companies (Contractor).

**WHEREAS**, the Lead State has a Contract with the Contractor identified as No. A63308, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

**WHEREAS**, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

**WHEREAS**, the terms of the Contract specifically state that the agreement may be amended upon agreement of both parties.

**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

The unit/configuration limit has been increased for the following bands that were part of the original RFP/Contracts:

Band 1 - Servers, to include pricing configurations for mid-range servers between \$50,000 and \$100,000, including file and print servers.

Band 2 - Desktop, to include high-end workstations between \$50,000 and \$100,000.

Band 4 - Auxiliary Storage, including NAS, SAN, CAS, and CNS, to include pricing configurations for mid-range storage solutions between \$50,000 and \$100,000,

This Amendment is effective beginning on January 1, 2006, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 30, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

**1. GATEWAY COMPANIES**

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *JM*Title: Sr. Director Government SalesDate: 12/27/05

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. LEAD STATE****MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopischke*Title: Acquisition Management SpecialistDate: 12/28/05**3. LEAD STATE****COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: *Brenda Willard*Date: 12/29/05

# **PARTICIPATING ADDENDUM**

## **COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES**

### **MASTER PRICE AGREEMENT**

#### **Gateway Companies ("Contractor")**

**A63308**

#### **State of Washington**

#### **1. Scope**

The **Washington State Department of Information Services ("DIS")** is the Participating State under this Participating Addendum ("PA") and through execution of this PA adopts this Master Price Agreement #A63308 ("Agreement") as a Master Contract for the state of Washington. The Request for Proposals that resulted in the award of this Agreement was posted on the web site of the Minnesota Department of Administration, with a notice and link posted on the Washington State TechMall and was advertised in the Seattle Daily Journal of Commerce three times: Friday, February 13, 2004; Saturday, February 14, 2004; and Friday, February 20, 2004.

DIS' jurisdiction for purposes of this Agreement includes any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Agreement, and any local government or political subdivision (including public schools, colleges or universities) of the state of Washington or eligible non-profit organization with the authority to purchase such Products or Services, who have a properly executed Customer Service Agreement (Interlocal) with DIS. This Contract is not for personal use.

#### **2. Changes**

Contractor and DIS agree to the following modifications and additions to the language of the Agreement as executed by the Lead State.

##### **2.1. Paragraph 1 (Definitions)**

- a) The definition for "Equipment" is modified to exclude any and all Non-Gateway Branded equipment.
- b) The definition for "Peripherals" is modified to exclude any multifunction network print/fax/scanner devices that print more than 30 pages per minute from being sold under this PA. In addition, Contractor and DIS agree that only those third party Products that are incidental to the enhancement or configuration of the purchased Gateway-branded Product(s) can be included under Peripherals.
- c) The definition for "Products" is modified to exclude General Purpose Software. The only Software that is available for purchase under this Agreement is PC or server operating system software.

#### Purchasing Entities:

Payment shall be tendered to the Contractor within thirty (30) days after delivery of all Products on an invoice or thirty (30) days after receipt of the properly prepared invoice, whichever is later. If the Purchasing Entity fails to make timely payment, Contractor may invoice the Purchasing Entity one percent (1%) per month on the amount overdue. The Purchasing Entity shall make a good faith effort to pay within thirty (30) days of the invoice date of a properly prepared invoice. No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Agreement, except that maintenance can be paid up to one year in advance.

In 6.C. (Payment of Taxes) add the following language:

Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchasing Entity, as an agency of Washington State government, is exempt from property tax.

Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

#### Paragraph 8 (Termination)

3.A. (Termination for Convenience) add the following after the first sentence:

any time after the first anniversary date of the Agreement, DIS may terminate its PA, whole or in part, by giving the Contractor thirty (30) days written notice.

#### Paragraph 12 (Patent, Copyright, Trademark and Trade Secret Indemnification)

place the text of subparagraph A2 with the following: "Use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations; and"

#### Paragraph 20 (Records and Audit)

add the following language for the state of Washington:

Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of Purchasing Entity's Confidential Information, and accounting procedures and practices,

able, at no additional cost to the State. Contractor shall be responsible for any  
tions or disallowed costs incurred by Contractor or any of its Subcontractors.

#### 24 (Indemnification)

language so that "Purchasing Entity(ies)" is included in each place that  
ng Entity(ies)" appears.

#### 35 (Data Practices)

following language for the state of Washington:

acknowledges that some of the material and information that may come into  
on or knowledge in connection with this PA or its performance may consist of  
that is exempt from disclosure to the public or other unauthorized persons  
r chapter 42.17 RCW or other state or federal statutes ("Confidential  
n"). Confidential Information includes, but is not limited to, names, addresses,  
urity numbers, e-mail addresses, telephone numbers, financial profiles, credit  
ation, driver's license numbers, medical data, law enforcement records,  
Entity source code or object code, or Purchasing Entity or Washington State  
ormation or information identifiable to an individual that relates to any of  
of information. Contractor agrees to hold Confidential Information in strictest  
and not to make use of Confidential Information for any purpose other than  
nance of this PA, to release it only to authorized employees or Subcontractors  
uch information for the purposes of carrying out this Contract, and not to  
ulge, publish, transfer, sell, disclose, or otherwise make the information  
ny other party without Purchasing Entity's express written consent or as  
y law. Contractor agrees to release such information or material only to  
or Subcontractors who have signed a nondisclosure agreement, the terms of  
e been previously approved by Purchasing Entity. Contractor agrees to  
physical, electronic, and managerial safeguards to prevent unauthorized  
Confidential Information.

ly upon expiration or termination of this PA or the pertinent transaction with  
Entity, Contractor shall, at Purchasing Entity's option: (i) certify to  
Entity that Contractor has destroyed all Confidential Information; or  
all Confidential Information to Purchasing Entity; or (iii) take whatever other  
easing Entity requires of Contractor to protect Purchasing Entity's Confidential  
n.

of this section by Contractor or its Subcontractors may result in termination of  
act and demand for return of all Confidential Information, monetary damages,  
s.

acknowledges that DIS and Purchasing Entities are subject to chapter 42.17  
that this Contract shall be a public record as defined in chapter 42.17 RCW.  
ic information that is claimed by Contractor to be Proprietary Information,  
early identified as such by Contractor. To the extent consistent with chapter  
W, DIS and Purchasing Entities shall maintain the confidentiality of all such  
n marked Proprietary Information. If a public disclosure request is made to  
ractor's Proprietary Information, DIS or Purchasing Entity will notify

Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchasing Entity will release the requested information on the date specified.

2.8. Paragraph 44 (Reporting and Fees)

Add the following language for state of Washington:

Contractor agrees to provide monthly reports to the Washington Primary Contact. The monthly report shall include the net (excluding sales taxes, returns and credits) Washington sales for the month just ended, subtotaled by Purchasing Entity name within Washington and shall include the Gateway customer number for each Purchasing Entity. The report shall be accompanied with a check payable to the Department of Information Services for an amount equal to one and one-half percent (1.5% or .015) of the net Washington sales for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which Contractor invoiced the Purchasing Entity. Monthly reports are required even if no activity occurred.

2.9. Paragraph 46 (Audits)

Add the following language for the state of Washington:

As a part of its Participating State function, DIS will from time to time perform audits of Purchasing Entity invoices to ensure that the invoices and that the Products and Services listed and the prices charged for the Products and Services are accurate and in accordance with the Agreement. DIS will perform these audits by selecting Purchasing Entities from an Activity Report and asking Contractor to send the invoices for those Purchasing Entities for that report period. The DIS request will be in writing, and will list the Gateway customer numbers for the Purchasing Entities. Such requests will not exceed twelve (12) per year. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of Contractor's receipt of DIS' request. Contractor will be responsible for any audit exceptions or disallowed costs.

Dis will also conduct periodic spot check audits of the Prices, Products and Services listed on the website that Contractor maintains for state of Washington Purchasing Entities. DIS will communicate any discrepancies to Contractor and Contractor agrees to correct any deficiencies within three (3) Business Days, or as otherwise agreed.

2.10. Paragraph 49 (Ownership)

All references to the "State" in this paragraph shall include the Purchasing Entity submitting the Purchase Order under which the work is conducted or the Services delivered, as applicable.

2.11. Paragraph 52 (Right to Publish)

Add the following language for the state of Washington:

Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Agreement or any Product furnished by Contractor wherein DIS' or Purchasing Entity's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchasing Entity's name with Contractor's Products or Services may, in DIS' or Purchasing Entity's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or Purchasing Entity *prior* to such use.



2.12. Exhibit A (Additional Warranties)

Contractor and DIS agree that the Custom Integrated Solutions (CIS) for Washington State Purchasing Entities are offered only in relation to Equipment and Products being purchased under this Agreement.

2.13. Exhibit C (Value Added Services)

Contractor and DIS agree that the Services offered in Exhibit C shall be offered only for Gateway branded Equipment and Products. Contractor and DIS agree to delete Section E, Training, and delete "Network Integration Services" from Section F of Exhibit C for Washington State Purchasing Entities.

**3. Primary Contact:**

The primary participating entity contact for this PA is as follows:

**Scott Smith, Technology Brokering Services Manager**

State of Washington  
Department of Information Services

***If by US Postal Service:***      ***If by Overnight Courier:***

PO Box 42445                      2411 Chandler Court SW  
Olympia, WA 98504              Olympia, WA 98502

Phone: 360-725-4200

Fax: 360-753-1673

E-mail: [ss@dis.wa.gov](mailto:ss@dis.wa.gov)

The primary Contractor contact for this PA is as follows:

**Kris Morgensen, Contract Administrator**

Gateway Companies, Inc.  
610 Gateway Drive, MD R-30  
N. Sioux City, SD 57049

Phone: (800) 846-2042, ext. 28971

Fax: (605) 232-2701

E-mail: [kris.morgensen@gateway.com](mailto:kris.morgensen@gateway.com)

**4. Servicing Subcontractors:**

Gateway will use Authorized Service Providers ("ASP") or Network Service Providers ("NSP"), with an authorized territory in Washington, as listed on the the Gateway WSCA-NASPO site for this Agreement, to facilitate service requirements.

Orders and payments are to be handled by Gateway directly.

The **Master Price Agreement Number A63308** *must* be shown on all Purchase Orders issued against this Agreement.

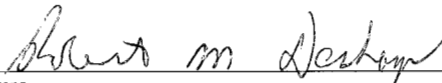
This PA and the Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter hereof and all previous communications, representations, understandings, warranties or agreements, whether oral or written, not contained in this Agreement or PA, or a written amendment hereto, shall not be binding on either party.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Agreement and its exhibits, by any purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

**APPROVED**

State of Washington  
Department of Information Services

  
Signature

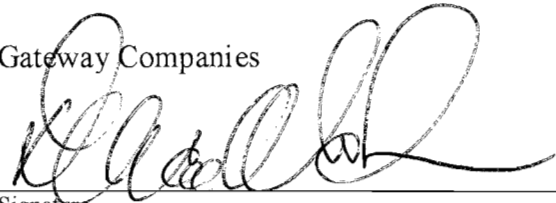
Robert M. Deshaye  
Print or Type Name


Assistant Director  
Title

1-10-05  
Date

**APPROVED**

Gateway Companies

  
Signature

 Mary Jane Sweeney  
Print or Type Name

Director-Contracts  
Title

12.21.04  
Date